

BOARD OF CHIROPRACTIC EXAMINERS

FINAL STATEMENT OF REASONS

Hearing Date: July 6, 2009, in Sacramento, CA.

Subject Matter of Proposed Regulations: Chiropractic Specialties

Section Affected: Article 2, Division 4, Title 16 of the California Code of Regulations, Section 311.1.

Updated Information: The Initial Statement of Reasons and Amended Initial Statement of Reasons are included in the file. The information contained therein is updated as follows:

The Board of Chiropractic Examiners issued a 15-day Notice of Documents Added to the Rulemaking File (Amended Initial Statement of Reasons), a 15-day Notice of Modified Text on August 10, 2009, and a second 15-day Notice of Modified Text and Documents Added to the Rulemaking File (American Chiropractic Association – Requirements for Specialty Board Approval and International Chiropractic Association – Requirements for Specialty Board Approval) on October 28, 2009.

Local Mandate: A mandate is not imposed on local agencies or school districts.

Small Business Impact: This regulation will not have a significant adverse economic impact on small businesses. This proposal formally recognizes chiropractic specialties to enhance consumer protection and will not result in additional costs to small businesses or licensees.

Consideration of Alternatives: No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Written Objections or Recommendations Received During the 45-day Comment Period:

- (1) Beverly J. Dalby, D.C., urges the Board to formally recognize chiropractic specialties and states that it is important for the public interest to maintain specialty designations for chiropractic Qualified Medical Evaluators.

Response:

This comment of support was accepted by the Board.

- (2) Ronald M. Cappi, D.C., supports the proposed regulations and states that it is only in the best interest and the insurance industries best interest to seek the most trained, experienced, and educated chiropractors for their examinations and evaluations.

Response:

This comment of support was accepted by the Board.

- (3) Maia James, D.C., President, California Chiropractic Association (CCA) supports the proposed regulations. CCA supports the proposed language as written and explained that the three specialty boards included in the proposed language are of the highest quality. Additionally, CCA states that some individuals and organizations will push for higher testing standards or prevent other legitimate specialty boards from being recognized; therefore, the CCA recommends that the Board adopt the current version of the proposed regulations.

Response:

The Board accepts this comment and thanks CCA for their support.

- (4) Gary A. Longmuir, D.C., American Board of Chiropractic Specialties (ABCS), supports the proposed regulations to recognize chiropractic specialties conferred by a specialty board that is recognized by the American Chiropractic Association (ACA) or the International Chiropractic Association.

The ABCS opposes the Board's decision to include the International Academy of Clinical Neurology (IACN). According to the commenter, the IACN is not recognized by ACA or ICA which have standards for both education and credentialing of a specialty in the chiropractic profession. The commenter suggests that IACN be deleted from the proposed text.

Response:

The Board disagrees with this comment. The IACN is an interdisciplinary, non-profit educational organization founded in 1997 and serves 125 members in seven countries. The IACN recognizes only those classes provided by Council on Chiropractic Education accredited chiropractic institutions, and the IACN allows only qualified doctors of chiropractic to accrue hours toward specialty certification. Although IACN is not affiliated with the ACA or ICA, its educational programs utilize guidelines consistent with resolutions published by the ACA.

During the 45 day comment period, the Board disagreed with comments opposing the Board's recognition of the IACN in the proposed language; however, at a public meeting held on September 24, 2009, the Board voted to remove Board recognition of the IACN from this regulation and modified the language accordingly.

- (5) Dr. Sergio F. Azzolino, D.C., Vice President, American Chiropractic Neurology, supports the proposed regulations to recognize chiropractic specialties conferred by a specialty board that is recognized by the American Chiropractic Association (ACA) or the International Chiropractic Association.

The commenter opposes the Board's decision to include the International Academy of Clinical Neurology (IACN) and other equivalent boards in the proposed text.

Response:

The Board addressed concerns regarding the IACN in comment 4 above.

- (6) Randall G. March, D.C., supports the proposed regulations and does not believe that having chiropractic specialties is misleading to the public.

Response:

The Board accepts this comment of support.

- (7) Jonice Owen, D.C., supports the proposed regulations and expressed that the proposal would allow injured workers to choose a Qualified Medical Evaluator.

Response:

The Board accepts this comment of support.

- (8) Margaret E. Perez, D.C., supports the proposed regulation stating that the extra training is invaluable in evaluating the injured workers, and it would be unfair to deny injured workers the opportunity to choose doctors that have additional training.

Response:

The Board accepts this comment of support.

- (9) Robert W. Adams, D.C., requests that the Board provide for chiropractic specialties and should be designated to those that have completed additional training and requirements for Board certification.

Response:

The Board accepts this comment of support.

- (10) Barb Johnston, Executive Director, Medical Board of California expressed concerns with the proposed text. Ms. Johnston explained that the purpose of the Board's proposal was a result of the adoption of the Division of Industrial Relations,

Division of Worker' Compensation (DIR) regarding Qualified Medical Evaluators (QME) that states that "The Administrative Director shall recognize only those specialty boards recognized by the respective California licensing boards....". The MBC is uncertain that the proposed text addresses the language adopted by the DIR. The MBC states that the Board's proposed language does not recognize "specialty boards", but instead recognizes "those chiropractic specialties conferred by a specialty board. The interpretation of the DIR language, it could be argued that the proposed language does not recognize a board and could be moot. Additionally, the MBC is concerned that the proposed language does not meet the "clarity" standard of the Administrative Procedure Act because the proposed language does not explain the process by which the Board would determine equivalent organizations. Lastly, the MBC noted an incorrect citation to the reference and authority.

Response:

The Board agrees with all three points provided by the commenter and amended the proposed text accordingly. The amended text clarifies that the Board is recognizing those specialties recognized by specialty boards, deletes the reference of equivalent organizations, and corrects the citation pertaining to reference and authority.

Oral Objections or Recommendations Received During the 45-day Comment Period:

- (11) Carlyle R. Brakensiek, Executive Vice President, California Society of Industrial Medicine and Surgery supports the proposed regulations.

Response:

The Board accepts this comment and thanks the California Society of Industrial Medicine and Surgery for their support.

- (12) Robert E. Dubro, D.C., Vice President, American Board of Chiropractic Specialties, commends the Board's proposal and states that it helps the public. Dr. Dubor suggests that the Board amend the proposed language to remove International Academy of Clinical Neurology (IACN) as an approved organization that recognizes specialty board's because it is a single entity that is self certifying and does not believe that there is a master entity that holds them to any certain requirements or standards. It is further suggested that the Board consider having a sub-agency regarding the certification programs to monitor future organizations the Board determines are equivalent to the organization mentioned to ensure that they are properly run certification programs. This will ensure that the public is not confused and the certification programs are appropriate.

Response:

This board rejects this comment and addressed the concerns raised regarding the IACN in comments 4 and 5 above.

- (13) Randall March, D.C., expressed concerns with the word "conferred" and recommends that the Board amend the language to include "degree" before conferred. Dr. March states that most certification programs consist of three hundred class hours and would be board eligible, but should not be considered Board certified. Board certification should require additional training and include testing.

Response:

The Board disagrees and rejects this comment. The Board issues only one form of license. The Board does not have the authority to require additional testing or certification of post licensure education and this proposed regulation is not intended to require additional testing or certification.

- (14) Kristine Schultz, California Chiropractic Association (CCA) supports the proposed regulations as written. Ms. Schultz states that CCA worked with the Board to develop straight forward fair language and appreciates the addition of IACN as an organization that is required to recognize chiropractic specialties. Ms. Schultz explained that the IACN is a licensing board that has several individuals that have completed degrees and should be initially recognized by the Board.

Response:

The Board accepts this comment of support.

During the 45 day comment period, the Board agreed with comments supporting the Board's recognition of the IACN in the proposed language; however, at a public meeting held on September 24, 2009, the Board voted to remove recognition of the IACN from this regulation and modified the language accordingly.

- (15) Ed Jennings, D.C., supports the proposed regulations and stated that consumers should be able to choose a specialty to complete their evaluations.

Response:

The Board accepts this comment and thanks Dr. Jennings for his support.

Written Comments Received During the 1st 15-Day Comment Period:

- (1) Kevin Hearon, D.C., President of the Council on Extremity Adjusting (CCEP) opposes the Board's proposal because it will render their specialty useless in California, grants control of continuing education to trade associations, and is political. Dr. Hearon further states that trade associations purpose is to represent a profession and promote its benefits and is not intended to control the inside working profession.

Response:

The Board disagrees and rejects this comment. The proposed language was modified to clarify that this proposal is specific to chiropractors listed under a specialty category that wish to be listed as a Qualified Medical Evaluator for the Department of Industrial Relations, Division of Worker's Compensation (DIRDWC). These changes will allow the Board to avoid the role of becoming a specialty certifying organization and in effect are delegating that function to the American Chiropractic Association (ACA) and the International Chiropractic Association (ICA). In order to ensure that chiropractors could continue to maintain their QME status, the Board determined that this proposal was necessary. However, this proposal does not prohibit other organizations from continuing with their certification programs nor does it prohibit a chiropractor from advertising as a specialty as long as they completed the specialty program and received certification.

- (2) Stephen Hensel, D.C., comments that the Board's proposal provides dictating power to two organizations.

Response:

The Board respectfully disagrees and rejects this comment. The proposed regulation will allow the Board to avoid the role of becoming a specialty certifying organization and in effect delegate that function to two nationally recognized organizations: the American Chiropractic Association (ACA) and the International Chiropractic Association (ICA). The Board has reviewed their criteria for approval of specialty boards and determined their approval criteria to be adequate and promotes consumer protection.

- (3) Frank C. Noble, D.C., C.C.E.P., opposes the Board's proposal.

Response:

The Board rejects this comment, as this is the commenter's opinion and fails to provide a reason for opposition. This proposal is in response to regulations recently adopted by the DIRDWC regarding Qualified Medical Evaluators

(QME) that limits the use of QMEs to those who practice chiropractic specialties recognized by the California Board of Chiropractors.

- (4) H. Edward Camp, D.C., opposes the Board's proposal and believes that it is political.

Response:

The Board rejects this comment and addressed this concern in comment 1 above.

- (5) Michael Frogley, D.C., questions why the Board would negate any continuing education programs taught in university and college campuses and requests that the Board continue to allow credible programs in the university and colleges.

Response:

This proposal does not affect any continuing education programs or programs in universities and colleges. This proposal is solely for the purpose of chiropractors listed under a specialty category that wish to be listed as a Qualified Medical Evaluator (QME) with the Department of Industrial Relations, Division of Workers' Compensation (DIRDWC).

- (6) Chad Craig, D.C., opposes the Board's proposal.

Response:

The Board rejects this comment, as this is the commenter's opinion and fails to provide a reason for opposition. This proposal is in response to regulations recently adopted by the DIRDWC regarding Qualified Medical Evaluators (QME) that limits the use of QMEs to those who practice chiropractic specialties recognized by the California Board of Examiners.

- (7) Cindy L. Puente, D.C., opposes the Board's proposal to place continuing education in the hands of a selected few.

Response:

The Board rejects this comment and addressed this issue in comment 5 above.

- (8) Maia James, D.C., President, California Chiropractic Association, supports the Board's proposal and stated that the International Academy of Clinical Neurology has recently changed its name back to their original founded name of International Academy of Chiropractic Neurology and should be updated in the proposed text.

Response:

The Board rejects this comment as it is not relevant to the changes made to the proposed language which removed the BCE's recognition of the IACN as a specialty certifying organization.

- (9) Joseph M. Horrigan, D.C., President of the American Chiropractic Board of Sports Physicians (ACBSP), requests that the Board recognize their association because the ACBSP received recognition by the American Chiropractic Association House of Delegates, recognition of our certification processes from the National Commission for Certifying Agencies, and has policies and procedures, outcome assessment tools, and continuing education in place. The ACBSP has a long history as a leader in chiropractic sports medicine certification. Dr. Horrigan further goes on to explain the ACBSP's certification process.

Response:

The Board rejects this comment. The proposed regulation will allow the Board to avoid the role of becoming a specialty certifying organization and will in effect delegate that function to two nationally recognized organizations: the American Chiropractic Association (ACA) and the International Chiropractic Association (ICA). The Board has reviewed their criteria for approval of specialty boards and determined their approval criteria to be adequate and promotes consumer protection. This regulation does not prohibit the ACBSP from obtaining recognition as a specialty Board from the ACA or the ICA.

- (10) Michael J. Nesnick, D.C., comments that the Board's proposal takes a political position by limiting the recognition of specialties to a few associations. In addition, Dr. Nesnick states that the revised language deleting "and equivalent organizations as determined by the Board" takes control away from the Board and gives the control to the associations listed in the proposed text. Dr. Nesnick requests that the Board reconsider the proposal.

Response:

The Board rejects this comment and addressed these concerns in comments 2 and 4 above.

- (11) Eddie J. Braddock, D.C., objects to the International Academy of Clinical Neurology being included as an organization offering specialty boards because it does not represent any national or international chiropractic population, is not equal to the American Chiropractic Association or the International Chiropractors Association, does not list on their web site any academic standing as a chiropractic school, and is not recognized by the Council on Chiropractic Education. Dr. Braddock further requests that the Board modify the language to include specific criteria for the organizations.

Braddock further requests that the Board modify the language to include specific criteria for the organizations.

Response:

The Board accepts the recommendation to remove the IACN from the proposed regulation and has modified the proposed language accordingly. The Board rejects the request to include criteria for approving organizations for reasons previously stated in comment 2 above.

- (12) Randall March, D.C., requests that the Board modify the language to read, "The board recognizes only those chiropractic specialties conferred by specialty boards that are recognized by the American Chiropractic Association, the International Chiropractors Association, or equivalent organizations as determined by the board" for the following reasons:

- Including the statement "chiropractic specialties conferred by" ensures that the chiropractor passes an exam and was granted a degree or certificate;
- The International Academy of Clinical Neurology (IACN) list of current members includes two doctors of chiropractic in California, which are not qualified medical evaluators;
- The IACN's policies or intentions are not overseen by any other organization nor does it compare to any other organization.

Response:

The Board rejects these comments regarding recognizing equivalent organizations for reasons addressed in comments above. The Board agrees with the comments regarding Board recognition of the IACN and has modified the proposed language by removing the IACN from the regulation.

- (13) Michael Krasnov, D.C., has concerns with the Board's proposal that will place limitations on the organizations that the Board will recognize as a specialty and believes that there is a better way to determine who is eligible or capable of becoming a QME. Additionally, the revised language no longer allows for recognition of other organizations by the Board other than the ones listed. Dr. Krasnov further explains that the American Chiropractic Association includes specialties in pediatrics and acupuncture and it would be difficult for the Board to explain who would be more qualified as a QME. Furthermore, Dr. Krasnov states that this is political and the Board should develop their own standard for specialty recognition.

Response:

The Board rejects these comments and addressed issues regarding political intent, the limitation on Board recognized organizations, and developing

standards or criteria in previous comments above. Furthermore, the Board cannot recognize specialties that are outside the chiropractic scope of practice (i.e. acupuncture).

- (14) Joseph S. Frezy, D.C., President, International Academy of Chiropractic Neurology, provided information in response to comments received by Dr. Carrick.

Response:

This comment does not warrant a response as it is in response to a previous comment received.

- (15) Lewis Meltz, D.C., Chiropractic Orthopedic Group provided examples of different specialty programs and states that there is confusion regarding chiropractic specialties in California. Dr. Meltz questions the basis for the International Academy of Neurology listed as a specialty board, considering that it is currently recognized as a council of the American Chiropractic Association. Dr. Meltz suggests that a chiropractic specialty recognized by the board should complete 300 hours of post-graduate level education; have 5-years of uninterrupted active clinical practice; have classroom, practical, or online distance learning hours sponsored by a WASC accredited college or university; and be recognized by either the American Chiropractic Association or the International Chiropractors Association.

Response:

The Board rejects this comment. The first part of this comment regarding the IACN was addressed in similar previous comments above. The Board disagrees with the suggested criteria for Board recognition of chiropractic specialties regarding post-graduate education as it implies an additional degree which exceeds post-licensure education required by the Board.

Written Comments Received During the 2nd 15-day comment period:

- (1) Eddie J. Braddock, D.C., Diplomate of the American Board of Chiropractic Orthopedists opposes the Modified Proposed Regulatory Language for Chiropractic Specialties stating you can't write a regulation saying you recognize organizations to certify diplomate status in chiropractic specialties without including regulatory language that states the Chiropractic Specialty Education Requirements for the State of CA, the same as is stated in the Chiropractic Initiative Act. Dr. Braddock provided proposed regulatory language and made the following recommendations:

- 1.) A minimum of five years of uninterrupted active clinical practice should be required to matriculate into a post graduate Chiropractic Specialty course.

- 2.) The post graduate curriculum should be standardized by the specialty councils and followed in the post graduate specialties course.
- 3.) A minimum of 300 hours of post-graduate level education should be required and candidates should pass module and final examinations.
- 4.) Classroom, laboratory and/or online distance learning hours should be recorded by attendance records the same as required for the DC degree.
- 5.) Candidates who graduated from a fully accredited post graduate chiropractic school become eligible to take the ACA or ICA Council Diplomate board examinations.
- 6.) Chiropractic Diplomate candidates should pass comprehensive written, oral and practical examinations.

Response:

The Board of Chiropractic Examiners does not approve Chiropractic Specialty Boards (BCE) and does not wish to do so. As such, the BCE did not include specific requirements in this proposed regulatory language. The ACA and ICA represent national and international chiropractic populations and both organizations have criteria for approving chiropractic specialty boards. The BCE has reviewed their criteria and determined their standards are sufficient to ensure consumer protection. Therefore, the BCE has chosen to delegate specialty board approval to the ACA and ICA solely for the purpose of the Division of Worker's Compensation regulations.

- (2) Maia James, D.C., President, California Chiropractic Association supports the Modified Proposed Regulatory Language for Chiropractic Specialties, however, requests the BCE reconsider an amendment that would allow the International Academy of Chiropractic Neurology (IACN) to also be recognized. Dr. James provided proposed regulatory language and made the following comments and recommendations:

- 1.) The IACN adheres to the same educational standards as ACA and ICA.
- 2.) Any regulation that does not recognize IACN is not fair to injured workers who should be able to choose all doctors that have obtained a minimum level of specialist training.
- 3.) Eliminating IACN would result in doctors who completed years of rigorous training and spent thousands of dollars to be excluded from BCE recognition. Exclusion would result in significant reduction of income for these doctors.
- 4.) Establish a grandfather clause that recognizes doctors of chiropractic who have obtained diplomate status from IACN or rewrite the regulation to establish the minimum standards for specialty boards that are BCE recognized.
- 5.) Minimum requirements should be; sponsorship by a CCE accredited college, minimum of 300 hours of classroom instruction and short-term residency session, mandatory oral and written examinations, and mandatory continuing education requirements.

Response:

The Board of Chiropractic Examiners does not approve Chiropractic Specialty Boards (BCE) and does not wish to do so. As such, the BCE did not include specific requirements in this proposed regulatory language. The ACA and ICA represent national and international chiropractic populations and both organizations have criteria for approving chiropractic specialty boards. The BCE has reviewed their criteria and determined their standards are sufficient to ensure consumer protection. Therefore, the BCE has chosen to delegate specialty board approval to the ACA and ICA. This proposal is specific to chiropractors listed under a specialty category that wish to be listed as a QME with DIRDWC and does not provide for any changes to continuing education programs. Further, this regulation does not prohibit the IACN from obtaining recognition from the ACA or the ICA.

- (3) Wayne M. Whalen, D.C., opposes the Modified Proposed Regulatory Language for Chiropractic Specialties stating the BCE reconsider eliminating recognition of the International Academy of Chiropractic Neurology (IACN). Dr. Whalen provided proposed regulatory language. Comments and recommendations are as follows:

- 1.) Failure to recognize the IACN would have specific professional and financial ramifications.
- 2.) Prior DWC regulations recognized chiropractic neurologists as a distinct group and included those with IACN certification.
- 3.) Eliminating IACN would discriminate solely based on political affiliation, not academic qualification.
- 4.) Whether or not a specialty board is recognized by ACA or ICA should not be the central issue in this policy. The IACN adheres to the same educational standards as ACA and ICA.
- 5.) Eliminating IACN would result in eliminating doctors who completed essentially the same academic requirements as the ACA or ICA simply because they support a different organization of chiropractic neurologists.
- 6.) Selectively approving only ACA or ICA recognized boards is discriminatory against doctors who have obtained certification with identical or superior requirements.
- 7.) Should the Board choose to not amend the proposed language, it could at least establish a grandfather clause.

Response:

The Board rejects this comment for reasons explained in comment 2 above.

Oral Comments Received at Board Meetings:
March 26, 2009

Brian Stiger, Executive Officer of the Board of Chiropractic Examiners recommended amending the proposed regulatory language to what was provided in the board packet prior to submission to the Office of Administrative Law for publication.

Response: The board voted to adopt the amended proposed language presented at this board meeting for submission to the Office of Administrative Law. (Minutes found under Tab 5A of the rulemaking file.

- (1) Kristine Schultz, California Chiropractic Association urged the board to include the International Academy of Clinical Neurology (IACN) in the proposed language.

Response: The board agrees with this recommendation and has included the IACN in the proposed regulatory language.

At a public meeting on September 24, 2009, the Board voted to remove Board recognition of the IACN from this regulation and modified the language accordingly.

July 30, 2009

- (1) The July 30, 2009 minutes erroneously reflect that Brian Stiger proposed suggested responses from staff to the comments received from the public meeting on March 26, 2009 under the Proposed Regulations Heading, Section C. The minutes also erroneously state that a motion was made and carried to accept the suggested responses to the March 26, 2009 comments. The minutes should reflect that Mr. Stiger provided an update on the regulation package and provided proposed suggested responses on the 45-day comment period which are contained in this final statement of reasons and the motion should reflect the same comment period.

September 24, 2009

- (1) Dr. Charles Davis provided clarification in response to the board's request for information on the number of hours required for ICA's certification standards. Dr. Davis stated that 300 hours are required for diplomate status.

Response: This comment was given in response to the board's request for clarification and the board used the point of clarification to determine that the proposed language correctly references specialty boards rather than individual specialties.

- (2) Kristine Schultz, CCA provided clarification on CCA's recommendation to include the Academy of Chiropractic Neurology (IACN) in the proposed language. She asserts that IACN is equal to the ACA and should be included in the proposed regulation.

Response: The board determined that the IACN is not equivalent to ACA and ICA and voted to remove this organization from the proposed language. This regulation does not prohibit the IACN from obtaining recognition from the ACA and ICA.

- (3) Dr. McAllister requested for clarification on the board's response to a written comment regarding whether American Chiropractic Board of Sports Physicians would be recognized because they have received recognition by the American Chiropractic Association House of Delegates.

Response: The board discussed this comment and determined that the ACBSP would be recognized only if they were approved by either the ACA or ICA as identified in the proposed regulations.

November 19, 2009

- (1) Dr. Becker recommended the board replace the word "recognizes" with "does not directly approve" in response to the motion that was carried to approve staff's recommended responses to comments and revised proposed language.

Response: The Board's motion was to approve staff's suggested responses, not to approve chiropractic specialties. The proposed regulation will allow the board to avoid the role of becoming a specialty certifying organization and in effect delegate that function to two nationally recognized organizations: the American Chiropractic Association and the International Chiropractic Association. The Board has reviewed their criteria for approval for specialty boards and determined their approval criteria to be adequate and promotes consumer protection.